Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.46-Dof 2003 (Old No.854 of 1999**)**

1. Pooran Singh S/o Sri Kedar Singh,
2. Smt.Shakuntala W/o Sri Pooran Singh,
   Both are Residents of Village-Jodanpur,
   P.S. Khatima, District-Udham Singh Nagar.

.....Claimants/Appellants

Versus

The New India Assurance Company
Branch Udaipur (Rajasthan)
through Divisional Manager,
Divisional Office, Nainital Road Haldwani,
District-Nainital **AND** another

.....Opp.parties/Respondents.

.....

Sri R.B.Agarwal, learned counsel for the Respondent No.1

Date: 27th Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

Application under Sec. 5 of the Limitation Act is allowed, as it is not opposed by the learned counsel for the respondent-Insurance Company.

2- Admit the appeal.

3- This appeal has been preferred by the claimant/ appellants for enhancement against the judgment and order dated 29.05.1999 passed by the Motor Accident Claims Tribunal/V Addl.District Judge, Nainital in Motor Accident Claim Petition No.263 of 1998, whereby the claim petition filed by the claimant/appellants has been allowed only for Rs. 80,000/- as compensation.

4- Brief facts giving rise to this appeal are that on 14.5.1998 at about 9.45 p.m. when deceased Govind Singh was returning back after the Darshan of Goddess Purna Giri by Tractor trolley No. URN-8058, near Village-Haldi Bhosia Truck No. DL-1G/A 4103 which was being driven rashly and negligently came from opposite direction and dashed against the Tractor trolley due to which the tractor turned turtle. Govind Singh fell down and sustained grievous injuries. Due to said injuries he died on the spot. The deceased was 15 years old at the time of accident. The father and mother of the deceased filed the claim petition before the Tribunal to the tune of Rs. 3,50,000/- as compensation.

5- The owner of the offending truck and Insurance Company-Opp.party Nos.1 & 2 respectively contested the claim petition by filing their separate written statements. They denied the allegations of claim petition. On the pleadings of the parties, the Tribunal framed necessary issues and after recording evidence, allowed the claim petition accordingly against the Insurance Company-Opp.party No.2. Feeling aggrieved, the claimants have come up in this appeal for enhancement of the amount of award.

6- The learned Tribunal framed as many as four issues in this case. In Issue No.1 the learned Tribunal on the basis of evidence on record held that the accident was occurred due to rash and negligent driving of the truck driver. The Insurance Company did not adduce any evidence which could show that there was negligence of the driver of the tractor –trolley. Issue No.1 was decided on the basis of consent given by Sri R.B.Agarwal, learned counsel for the Opp.party No.2- Insurance Company to pay Rs. 80,000/- to the claimants to which the claimants have also agreed. The learned Tribunal while deciding issue No.4 has

rightly held that since the parties are agreed for a lump sum payment of Rs. 80,000/- this issue is also decided accordingly and rightly allowed the claim petition for grant of Rs. 80,000/- against the Insurance Company-Opp.party No.2.

7- We find no illegality or error in the impugned order. The petition was decided with the consent of both the parties. The grounds taken in the appeal have no force and are misconceived.

8- The appeal has no merit and is hereby dismissed. The order impugned under appeal is affirmed. No order as to costs.

(B.S. Verma, J.) **(P.C.Verma, J.)**

P.Singh